

Exhibit 2

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ANTHONY BAFFO,

Plaintiff,

vs.

No. 10-CV-012425 (LDW) (ETB)

NEW YORK INSTITUTE OF TECHNOLOGY, ROBERT
RIZZUTO; in his official and individual
capacities; and LEONARD AUBREY, in his
official and individual capacities,

Defendants.

DEPOSITION OF ANTHONY BAFFO

New York, New York

Thursday, February 24th, 2011

Reported by:
Jeremy Frank, MPM
JOB NO. 21067

<p style="text-align: right;">2</p> <p>1</p> <p>2</p> <p>3 February 24th, 2011</p> <p>4 10:12 a.m.</p> <p>5</p> <p>6 Deposition of ANTHONY BAFFO, held at</p> <p>7 the offices of Fulbright & Jaworski, LLP, 666</p> <p>8 Fifth Avenue, New York, New York, pursuant to</p> <p>9 Notice, before Jeremy Frank, a Notary Public</p> <p>10 of the State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED, by</p> <p>3 and between counsel for the respective</p> <p>4 parties hereto, that the filing, sealing and</p> <p>5 certification of the within deposition shall</p> <p>6 be and the same are hereby waived;</p> <p>7 IT IS FURTHER STIPULATED AND AGREED that</p> <p>8 all objections, except as to the form of the</p> <p>9 question, shall be reserved to the time of the</p> <p>10 trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED that</p> <p>12 the within deposition may be signed before any</p> <p>13 Notary Public with the same force and effect</p> <p>14 as if signed and sworn to before the Court.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 Attorneys for Plaintiff</p> <p>5 THOMPSON WIGDOR & GILLY, LLP</p> <p>6 85 Fifth Avenue</p> <p>7 New York, NY 10003</p> <p>8 BY: GREGORY N. FILOSA, ESQ.</p> <p>9 gfilosa@twglaw.com</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Attorneys for Defendants</p> <p>14 FULBRIGHT & JAWORSKI, LLP</p> <p>15 666 Fifth Avenue</p> <p>16 New York, NY 10103</p> <p>17 BY: NEIL G. SPARBER, ESQ.</p> <p>18 nsparber@fulbright.com</p> <p>19 SAMANTHA BELTRE, ESQ.</p> <p>20 sbeltre@fulbright.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Baffo</p> <p>2 ANTHONY BAFFO, called as a</p> <p>3 witness, having been duly sworn by a Notary</p> <p>4 Public, was examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. SPARBER:</p> <p>7 Q. State your name for the record.</p> <p>8 A. Anthony Baffo.</p> <p>9 Q. State your address for the record.</p> <p>10 A. 171-07 33rd Avenue, Flushing, New</p> <p>11 York 11358.</p> <p>12 Q. Good morning, Mr. Baffo.</p> <p>13 A. Good morning.</p> <p>14 Q. My name is Neil Sparber, I'm with</p> <p>15 the firm of Fulbright & Jaworski and we</p> <p>16 represent the defendants New York Institute of</p> <p>17 Technology, Robert Rizzuto, and forgive me if</p> <p>18 I say Phil Rizzuto, and Leonard Aubrey in an</p> <p>19 action commenced in the United States District</p> <p>20 Court of the Eastern District of New York by</p> <p>21 you.</p> <p>22 And this morning I'm going to be</p> <p>23 asking you a series of questions, and if there</p> <p>24 is a question that you don't understand, just</p> <p>25 tell me and I'll try to rephrase the question.</p>

2 (Pages 2 to 5)

<p style="text-align: right;">10</p> <p>1 Baffo</p> <p>2 again depending on the event schedule.</p> <p>3 Q. On those days on which you worked,</p> <p>4 what time would you normally get to work?</p> <p>5 A. Again it varied, usually earlier</p> <p>6 before noon, and the weddings if they happened</p> <p>7 later on in the afternoon or at night I would</p> <p>8 generally stay through at least the time that</p> <p>9 the entrees were served which was in or around</p> <p>10 10:00.</p> <p>11 Q. Those were days on which there</p> <p>12 were events.</p> <p>13 Is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. What about the days where were</p> <p>16 there no event?</p> <p>17 A. It was generally a 10 to 6</p> <p>18 schedule, sometimes I would arrive earlier but</p> <p>19 usually not later than 10.</p> <p>20 Q. And did you have an office in the</p> <p>21 de Seversky Center?</p> <p>22 A. Yes.</p> <p>23 Q. And did Mr. Rizzuto also have an</p> <p>24 office there?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">12</p> <p>1 Baffo</p> <p>2 different events, there were e-mails and phone</p> <p>3 calls.</p> <p>4 Q. Okay.</p> <p>5 Now, do you recall the first time</p> <p>6 that you met Mr. Rizzuto approximately?</p> <p>7 A. Approximately it was in 1988 when</p> <p>8 I first met him when I was still in high</p> <p>9 school. I started working as a waiter at the</p> <p>10 de Seversky Center, that's when I met him, he</p> <p>11 was the chef at that time.</p> <p>12 Q. He was the executive chef?</p> <p>13 A. Yes.</p> <p>14 Q. At the time you that you started</p> <p>15 working for New York Institute of Technology</p> <p>16 in September 2006, do you know what Mr.</p> <p>17 Rizzuto's position was?</p> <p>18 A. He was, he had a dual role,</p> <p>19 executive chef and general manager.</p> <p>20 Q. Okay.</p> <p>21 And what was the position that you</p> <p>22 were applying for?</p> <p>23 A. General manager.</p> <p>24 Q. And Mr. Rizzuto was the current</p> <p>25 general manager?</p>
<p style="text-align: right;">11</p> <p>1 Baffo</p> <p>2 Q. Where was your office in proximity</p> <p>3 to Mr. Rizzuto's?</p> <p>4 A. We shared an office.</p> <p>5 Q. You literally shared an office</p> <p>6 like you both had desks in the same office?</p> <p>7 A. We literally shared an office,</p> <p>8 yes.</p> <p>9 Q. Going quickly, in paragraph 20 it</p> <p>10 talks about your dedication and your</p> <p>11 commitment to service and that you frequently</p> <p>12 received praise from the de Seversky patients</p> <p>13 patrons.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. During the course of the</p> <p>17 litigation, your counsel has produced a number</p> <p>18 of letters and correspondence from customers</p> <p>19 to you with regard to your service.</p> <p>20 Is that what you're referring to</p> <p>21 without going through each one in general with</p> <p>22 respect to this allegation?</p> <p>23 A. In general, those specific letters</p> <p>24 and correspondence as well as specific</p> <p>25 dealings with the guests at the events, at the</p>	<p style="text-align: right;">13</p> <p>1 Baffo</p> <p>2 A. Correct.</p> <p>3 Q. Is it correct you started work</p> <p>4 there on or about September 25th, 26th, 2006?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall how you heard about</p> <p>7 the job opening?</p> <p>8 A. I spoke directly to Robert</p> <p>9 regarding it in August 2006, at the very</p> <p>10 beginning of August.</p> <p>11 Q. Do you recall whether he had</p> <p>12 called you about it?</p> <p>13 A. I don't recall specifically if he</p> <p>14 called me or we had a conversation and it came</p> <p>15 up, I honestly don't recall.</p> <p>16 Q. All right.</p> <p>17 If any event, you had met Mr.</p> <p>18 Rizzuto back in 1988 when you were still in</p> <p>19 high school?</p> <p>20 A. Yes.</p> <p>21 Q. And did you remain in contact with</p> <p>22 him or did you at all between 1988 and when</p> <p>23 you began working in September 2006?</p> <p>24 A. Yes.</p> <p>25 Q. How often would you speak with Mr.</p>

4 (Pages 10 to 13)

<p style="text-align: right;">30</p> <p>1 Baffo</p> <p>2 substance of the conversation?</p> <p>3 A. Yes.</p> <p>4 Q. He specifically refused, I'm</p> <p>5 assuming the policy was to provide it over the</p> <p>6 phone to you?</p> <p>7 A. Correct.</p> <p>8 MR. FILOSA: If I can interpose an</p> <p>9 objection there, that's fine though.</p> <p>10 MR. SPARBER: We are doing the</p> <p>11 regular stips, do they still do that</p> <p>12 anymore?</p> <p>13 MR. FILOSA: If you want to propose</p> <p>14 certain stipulations, that's fine. I</p> <p>15 don't generally as a practice agree to</p> <p>16 quote/unquote regular stips. But we will</p> <p>17 agree to waive and the requirement</p> <p>18 that --</p> <p>19 MR. SPARBER: Do we agree that all</p> <p>20 objections are preserved to the time of</p> <p>21 trial except to those with respect to</p> <p>22 form or privilege?</p> <p>23 MR. FILOSA: Correct.</p> <p>24 MR. SPARBER: Okay.</p> <p>25 Mr. Baffo, I'm going to show you a</p>	<p style="text-align: right;">32</p> <p>1 Baffo</p> <p>2 records that you produced. This had to do</p> <p>3 with the weakness that you were feeling in</p> <p>4 your right hand?</p> <p>5 A. It was a numbness, yes.</p> <p>6 Q. Meaning, I'm differentiating this</p> <p>7 had nothing to do with your blood, this merely</p> <p>8 had to do with some other problem?</p> <p>9 A. Correct.</p> <p>10 Q. That was where you went on the</p> <p>11 29th?</p> <p>12 A. Correct.</p> <p>13 Q. All right.</p> <p>14 In looking at the complaint in</p> <p>15 paragraph 25, it states, on Thursday,</p> <p>16 October 1st, you were notified by the New York</p> <p>17 Blood Center that after having donated blood,</p> <p>18 your blood tested positive for the HIV virus.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. That's what you had learned when</p> <p>22 you went to the appointment with the New York</p> <p>23 Blood Center on October 1st?</p> <p>24 A. Correct.</p> <p>25 Q. Do you recall did you come to work</p>
<p style="text-align: right;">31</p> <p>1 Baffo</p> <p>2 copy of again a one-page document</p> <p>3 identified by Bates number D 00165 and</p> <p>4 ask the court reporter to mark this as</p> <p>5 Exhibit F, for identification.</p> <p>6 (Defendant's Exhibit F, e-mail</p> <p>7 chain, marked for identification, as of</p> <p>8 this date.)</p> <p>9 Q. Mr. Baffo, this is a copy of an</p> <p>10 e-mail, the first of which is dated September</p> <p>11 29th, 2009 from you to Mr. Rizzuto in which</p> <p>12 you say that you're going to the neurologist</p> <p>13 now. His reply says, okay.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Was this when you went to see Dr.</p> <p>17 Mallin?</p> <p>18 A. Correct.</p> <p>19 Q. So this is something that you had</p> <p>20 made an appointment for earlier in time?</p> <p>21 A. Correct.</p> <p>22 Q. Dr. Evanov had sent you to Dr.</p> <p>23 Mallin?</p> <p>24 A. Correct.</p> <p>25 Q. I had seen some of the medical</p>	<p style="text-align: right;">33</p> <p>1 Baffo</p> <p>2 on the morning of October 1st?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall what approximately</p> <p>5 what time you got in?</p> <p>6 A. I don't.</p> <p>7 Q. Did you have any discussions with</p> <p>8 anybody about going to an appointment or</p> <p>9 anything else in the afternoon?</p> <p>10 A. I would have told Robert that I</p> <p>11 was leaving for an appointment. I actually</p> <p>12 told him that I was going to see my doctor. I</p> <p>13 didn't bring the blood service into it at that</p> <p>14 point, I just said that, "I got a call from my</p> <p>15 doctor and he wants to see me right away, and</p> <p>16 I had to go in at 1:00."</p> <p>17 Q. So you have would have had this</p> <p>18 conversation with Mr. Rizzuto in the morning</p> <p>19 that you were going to an appointment in the</p> <p>20 afternoon?</p> <p>21 A. I believe so, it would have had to</p> <p>22 be in the morning.</p> <p>23 Q. I'm not disputing that, I'm just</p> <p>24 asking the question.</p> <p>25 A. I'm just thinking about it, that's</p>

<p style="text-align: right;">42</p> <p>1 Baffo</p> <p>2 approximately one to two, and did you go back</p> <p>3 to work that day?</p> <p>4 A. No.</p> <p>5 Q. Did you have any conversations</p> <p>6 with Mr. Rizzuto after 2:00 on October 1st,</p> <p>7 conversations on October 1st after 2:00?</p> <p>8 A. Yes.</p> <p>9 I called him, I do not remember if</p> <p>10 I actually spoke to him or if I left a</p> <p>11 voicemail, but I know that I called his</p> <p>12 personal line.</p> <p>13 Q. With the intent of either speaking</p> <p>14 with him or leaving a message that you were</p> <p>15 not returning on October 1st?</p> <p>16 A. Correct.</p> <p>17 Q. All right, that's October 1st.</p> <p>18 Moving on to October 2nd,</p> <p>19 October 2nd is a Friday, do you recall?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall what time you got to</p> <p>22 work that day?</p> <p>23 A. Approximately 8:00.</p> <p>24 Q. Was Mr. Rizzuto at work also?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">44</p> <p>1 Baffo</p> <p>2 positive for HIV.</p> <p>3 Q. Did Mr. Rizzuto say anything after</p> <p>4 that?</p> <p>5 A. He seemed generally concerned, I</p> <p>6 got up and calmed myself down, and then we sat</p> <p>7 around our conference table and we just talked</p> <p>8 about it a little more, for probably about 15</p> <p>9 minutes.</p> <p>10 He asked if in fact my wife was</p> <p>11 going to be tested, I said yes, that actually</p> <p>12 I had to call my doctor, Dr. Evanov that day</p> <p>13 to get her in to be tested because we were</p> <p>14 still going to Italy, that we weren't going to</p> <p>15 tell our families until we got back, that was</p> <p>16 basically it.</p> <p>17 MR. SPARBER: Mr. Baffo, I'm going</p> <p>18 to show you a copy of a document</p> <p>19 identified by Bates number D 07299 and</p> <p>20 ask you if you can identify this</p> <p>21 document, for identification.</p> <p>22 (Defendant's Exhibit H, e-mail,</p> <p>23 marked for identification, as of this</p> <p>24 date.)</p> <p>25 Q. Prior to asking you a question</p>
<p style="text-align: right;">43</p> <p>1 Baffo</p> <p>2 Q. When you walked in was he in the</p> <p>3 office?</p> <p>4 A. I don't recall specifically.</p> <p>5 Q. In any event, did there come a</p> <p>6 time on the morning of October 2nd that you</p> <p>7 had a conversation with Mr. Rizzuto?</p> <p>8 A. Yes.</p> <p>9 Q. Did there come a time when you</p> <p>10 spoke to Mr. Rizzuto about having gone to the</p> <p>11 blood center the day before?</p> <p>12 A. Yes.</p> <p>13 Q. Can you recount for me as best you</p> <p>14 can the substance of that conversation.</p> <p>15 A. Yes.</p> <p>16 At some point I was sitting at my</p> <p>17 desk and he asked me how I was doing, I</p> <p>18 replied I was not so good. He asked if he</p> <p>19 could ask if it was, if the information the</p> <p>20 doctor had given me was that I had leukemia or</p> <p>21 some form of cancer, I replied no. He asked</p> <p>22 if it was MS, I replied no. About that point</p> <p>23 I started to cry and I told him that I in fact</p> <p>24 didn't go to my doctor but I went to the Long</p> <p>25 Island Blood Service and that I had tested</p>	<p style="text-align: right;">45</p> <p>1 Baffo</p> <p>2 about this document, for the record when you</p> <p>3 had that conversation with Mr. Rizzuto on the</p> <p>4 morning of October 2nd, was there anybody else</p> <p>5 present?</p> <p>6 A. No.</p> <p>7 Q. If you look at this document which</p> <p>8 is marked as Exhibit H, there is an e-mail</p> <p>9 from you to Mr. Rizzuto saying that, "I'm</p> <p>10 heading out for my test, will be back."</p> <p>11 That e-mail was sent by you about</p> <p>12 11:13 a.m?</p> <p>13 A. Correct.</p> <p>14 Q. You had had your conversation with</p> <p>15 Mr. Rizzuto prior to that time?</p> <p>16 A. Correct.</p> <p>17 Q. What was the nature of the test</p> <p>18 that you were headed out for?</p> <p>19 A. I was scheduled for I think it is</p> <p>20 called an EEG that that was set up through Dr.</p> <p>21 Mallin's office to check the nerves in my</p> <p>22 shoulder and neck and stuff.</p> <p>23 Q. All right.</p> <p>24 This had been scheduled sometime</p> <p>25 earlier --</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 Baffo</p> <p>2 A. Correct.</p> <p>3 Q. -- than October 1st?</p> <p>4 A. Correct.</p> <p>5 Q. In your conversation with Mr.</p> <p>6 Rizzuto earlier did you tell him that you were</p> <p>7 in fact going to the doctor on the afternoon</p> <p>8 of October 2nd?</p> <p>9 A. I don't recall specifically.</p> <p>10 Based on my statement, "I'm</p> <p>11 heading out for my test," it is something he</p> <p>12 must have known about because it is not like</p> <p>13 I'm asking him, I'm stating that I'm going out</p> <p>14 for my test, so I would say that we had a</p> <p>15 conversation that I was going for a test.</p> <p>16 Q. Do you recall telling Mr. Rizzuto</p> <p>17 about the nature of the test?</p> <p>18 A. No.</p> <p>19 Q. Not whether it was related to your</p> <p>20 blood disorder as opposed to some other</p> <p>21 problem?</p> <p>22 A. I don't recall if I spoke to him</p> <p>23 about the nature of the test. I definitely</p> <p>24 know it was not related to the blood disorder</p> <p>25 or HIV because I didn't have anything</p>	<p style="text-align: right;">48</p> <p>1 Baffo</p> <p>2 Q. Did you see Dr. Evanov on the 2nd?</p> <p>3 A. I did not, my wife did.</p> <p>4 Q. Okay.</p> <p>5 You did see Dr. Mallin that day?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall how long that</p> <p>8 appointment was for?</p> <p>9 A. It was long.</p> <p>10 I actually wound up not returning</p> <p>11 back to work because my original follow up</p> <p>12 appointment was for 2:00 with Dr. Mallin. I</p> <p>13 was going to do the EEG, Dr. Mallin's office</p> <p>14 was about eight minutes from work so I could</p> <p>15 shoot back and forth. I was already</p> <p>16 previously scheduled to only work until 2:00</p> <p>17 on that Friday and I was going to go for the</p> <p>18 test, they said it only took a half hour, come</p> <p>19 back and then go back to the doctor. But I</p> <p>20 wound up waiting in the waiting room for over</p> <p>21 45 minutes and then the one appointment just</p> <p>22 rolled into the next so I wound up not going</p> <p>23 back to work.</p> <p>24 Q. You were going to have a separate</p> <p>25 appointment for the EEG and other tests so it</p>
<p style="text-align: right;">47</p> <p>1 Baffo</p> <p>2 scheduled that day for the HIV.</p> <p>3 Q. No, you knew what the nature of</p> <p>4 the test was.</p> <p>5 I was asking you whether or not</p> <p>6 you had communicated the nature of the test to</p> <p>7 Mr. Rizzuto, if you can recall?</p> <p>8 A. I don't recall, no.</p> <p>9 Q. In any event, you told him at</p> <p>10 11:13 that you were heading out for your test,</p> <p>11 you would be back later that day?</p> <p>12 A. Correct.</p> <p>13 Q. Do you recall what time your</p> <p>14 appointment was with Dr. Evanov?</p> <p>15 MR. FILOSA: Objection.</p> <p>16 MR. SPARBER: What did I do wrong?</p> <p>17 MR. FILOSA: It wasn't Dr. Evanov,</p> <p>18 it was Dr. Mallin.</p> <p>19 MR. SPARBER: Very good, I take</p> <p>20 that back.</p> <p>21 Q. Do you recall, I don't know if I</p> <p>22 asked the question, the test was with Dr.</p> <p>23 Mallin that day?</p> <p>24 A. It was in Dr. Mallin's office and</p> <p>25 it was for 12:00.</p>	<p style="text-align: right;">49</p> <p>1 Baffo</p> <p>2 would have entailed your normally going to his</p> <p>3 office, back to work and back to his office?</p> <p>4 A. Correct.</p> <p>5 MR. SPARBER: Could you mark that</p> <p>6 as Exhibit I, for identification.</p> <p>7 (Defendant's Exhibit I, e-mail</p> <p>8 chain, marked for identification, as of</p> <p>9 this date.)</p> <p>10 Q. Mr. Baffo, this is a copy of two</p> <p>11 e-mails from October 2nd, 2009 that's</p> <p>12 identified by Bates number AB 072. The first</p> <p>13 of the string is an e-mail from Mr. Rizzuto to</p> <p>14 you just basically stating that you're not</p> <p>15 coming back.</p> <p>16 Do you know if Mr. Rizzuto knew</p> <p>17 you were only to work until 2:00 that day?</p> <p>18 A. He had a copy of all of our</p> <p>19 schedules, it wasn't a secret. I e-mailed the</p> <p>20 de Seversky manager schedule to him, it was</p> <p>21 two weeks out, and I don't know where it was</p> <p>22 in this particular cycle. And the schedule</p> <p>23 was posted on the bulletin board behind his</p> <p>24 desk as well.</p> <p>25 Q. I wasn't casting aspersions. It</p>

13 (Pages 46 to 49)

<p style="text-align: right;">50</p> <p>1 Baffo</p> <p>2 seems from the e-mail for whatever the reason</p> <p>3 he was seemed surprised that you weren't</p> <p>4 coming back.</p> <p>5 Do you recall whether you spoke to</p> <p>6 him after you went to Dr. Mallin's office with</p> <p>7 respect to returning or not returning?</p> <p>8 A. I don't recall.</p> <p>9 Q. You were only scheduled to work</p> <p>10 until 2:00 so I would say it is a natural</p> <p>11 thing not to have to call because you knew you</p> <p>12 were only scheduled to work until 2:00?</p> <p>13 A. Correct.</p> <p>14 Q. So then you get this e-mail at</p> <p>15 5:04 saying, "You're not coming back, I didn't</p> <p>16 know that, what's your schedule for the</p> <p>17 weekend?"</p> <p>18 I assume this was your response,</p> <p>19 that's the e-mail on top of it?</p> <p>20 A. Correct, it is.</p> <p>21 Q. That you were going to be in all</p> <p>22 weekend, you were going to get payroll done</p> <p>23 prior to your going on vacation?</p> <p>24 A. Correct.</p> <p>25 Q. Also telling him you were only</p>	<p style="text-align: right;">52</p> <p>1 Baffo</p> <p>2 Q. Do you recall having any other</p> <p>3 telephone conversations with him over the</p> <p>4 weekend?</p> <p>5 A. No.</p> <p>6 Q. Do you recall having any e-mail</p> <p>7 exchange with him over the weekend?</p> <p>8 A. Yes.</p> <p>9 I would send him periodic updates</p> <p>10 of the events usually after they happened and</p> <p>11 certainly at the end of the night.</p> <p>12 Q. You returned to work on October</p> <p>13 16th, 2009?</p> <p>14 A. Correct.</p> <p>15 Q. You left for vacation on the 5th</p> <p>16 to go to Italy?</p> <p>17 A. Correct.</p> <p>18 Q. From the time that you left the de</p> <p>19 Seversky Center to go to Dr. Mallin on Friday</p> <p>20 the 2nd, you didn't see Mr. Rizzuto again</p> <p>21 until you returned to work on the 16th?</p> <p>22 A. Correct.</p> <p>23 Q. Similarly, did you have any</p> <p>24 telephone conversations with him between</p> <p>25 leaving the office to go see Dr. Mallin and</p>
<p style="text-align: right;">51</p> <p>1 Baffo</p> <p>2 supposed to work until 2:00 that day?</p> <p>3 A. Correct.</p> <p>4 Q. Once you left on that Friday to go</p> <p>5 to Dr. Mallin, you did not return to the</p> <p>6 office?</p> <p>7 A. Correct.</p> <p>8 Q. And you did not speak to Mr.</p> <p>9 Rizzuto other than through these e-mails on</p> <p>10 that day?</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 In fact, did you work on Saturday</p> <p>14 and Sunday?</p> <p>15 A. Yes.</p> <p>16 Q. You got the payroll done?</p> <p>17 A. I did.</p> <p>18 I got most of it done Sunday night</p> <p>19 and went back in on Monday morning to complete</p> <p>20 it and send it in.</p> <p>21 Q. So you left the office to go see</p> <p>22 Dr. Mallin on Friday the 2nd, and did you see</p> <p>23 Mr. Rizzuto at all in person over the weekend?</p> <p>24 A. I do not recall, I don't believe I</p> <p>25 did.</p>	<p style="text-align: right;">53</p> <p>1 Baffo</p> <p>2 returning to work on the 16th?</p> <p>3 A. We spoke on Monday morning.</p> <p>4 Q. Okay.</p> <p>5 A. Regarding the payroll getting done</p> <p>6 and when and where it was going to be sent on</p> <p>7 the phone.</p> <p>8 Q. Whatever the conversation was, it</p> <p>9 was work-related?</p> <p>10 A. Correct.</p> <p>11 Q. To your recollection it did not</p> <p>12 relate at all to any health-related issues?</p> <p>13 A. No.</p> <p>14 Q. Did there ever come a time you</p> <p>15 told anybody else at New York Institute of</p> <p>16 Technology about having tested positive for</p> <p>17 HIV other than Mr. Rizzuto?</p> <p>18 A. There was never anybody else at</p> <p>19 New York Institute of Technology who I told</p> <p>20 while I worked there.</p> <p>21 Q. You might have told people after</p> <p>22 you ceased working there?</p> <p>23 A. Yes.</p> <p>24 Q. That would have been, you stopped</p> <p>25 working there I suppose on the morning of</p>

14 (Pages 50 to 53)

<p style="text-align: right;">54</p> <p>1 Baffo</p> <p>2 October 26th, 2009?</p> <p>3 A. Correct.</p> <p>4 Q. So any conversations you would</p> <p>5 have had occurred after that meeting on the</p> <p>6 26th?</p> <p>7 A. Correct.</p> <p>8 Q. Subsequently do you recall who did</p> <p>9 you tell at New York Institute of Technology?</p> <p>10 A. Yes.</p> <p>11 Q. Who would that have been?</p> <p>12 A. Karen Massetti (phonetic).</p> <p>13 Q. Anybody else?</p> <p>14 A. No.</p> <p>15 Q. Who was Ms. Massetti?</p> <p>16 A. She was a part-time receptionist</p> <p>17 who worked Saturdays and Sundays.</p> <p>18 Q. For you?</p> <p>19 A. Correct.</p> <p>20 She also, I know her through my</p> <p>21 children's grammar school, she works there and</p> <p>22 that's where the connection came for her for</p> <p>23 the part-time job.</p> <p>24 MR. FILOSA: Let me know when there</p> <p>25 is a good time for a break.</p>	<p style="text-align: right;">56</p> <p>1 Baffo</p> <p>2 A. This is the fax cover sheet that I</p> <p>3 sent, it goes along with the confirmation from</p> <p>4 the Long Island Blood Service that I faxed to</p> <p>5 North Shore.</p> <p>6 Q. It is just addressed to a person</p> <p>7 by the name of Lauren.</p> <p>8 Is she at North Shore?</p> <p>9 A. I would think so, I don't know for</p> <p>10 sure like I don't know anybody there</p> <p>11 specifically by that name.</p> <p>12 Q. All right.</p> <p>13 In any event, you do recall that</p> <p>14 this was the cover sheet with respect to the</p> <p>15 letter dated October, the confirmation that</p> <p>16 you had got on October 15th, the letter that's</p> <p>17 been marked as Exhibit G?</p> <p>18 A. Yes.</p> <p>19 Q. That this was the cover sheet to</p> <p>20 your fax of that letter?</p> <p>21 A. Yes.</p> <p>22 Q. To this woman Lauren?</p> <p>23 A. Yes.</p> <p>24 Q. Who may or may not have been at</p> <p>25 LIJ.</p>
<p style="text-align: right;">55</p> <p>1 Baffo</p> <p>2 MR. SPARBER: Any time.</p> <p>3 MR. FILOSA: We have been going</p> <p>4 over an hour, just five.</p> <p>5 MR. SPARBER: Time flies when</p> <p>6 you're having fun, absolutely.</p> <p>7 Off the record.</p> <p>8 (Whereupon, an off-the-record</p> <p>9 discussion was held.)</p> <p>10 (Time noted: 11:28 a.m.)</p> <p>11 (Time noted: 11:37 a.m.)</p> <p>12 MR. SPARBER: We are going back on</p> <p>13 the record.</p> <p>14 Mark this as Exhibit J, for</p> <p>15 identification.</p> <p>16 (Defendant's Exhibit J, fax cover</p> <p>17 sheets, marked for identification, as of</p> <p>18 this date.)</p> <p>19 Q. Mr. Baffo, I'm showing you a copy</p> <p>20 of two pages identified by Bates numbers AB</p> <p>21 039 and AB 040.</p> <p>22 I ask you if you can identify</p> <p>23 these pieces of paper.</p> <p>24 A. Yes.</p> <p>25 Q. Can you tell me what they are?</p>	<p style="text-align: right;">57</p> <p>1 Baffo</p> <p>2 You faxed this to them on 10/19;</p> <p>3 is that correct?</p> <p>4 A. That's the date that's on the</p> <p>5 sheet, yes.</p> <p>6 Q. You don't have any reason to</p> <p>7 believe the date was not the day on which you</p> <p>8 sent it?</p> <p>9 A. No.</p> <p>10 Q. It would have been after your</p> <p>11 return from your trip to Italy?</p> <p>12 A. Correct.</p> <p>13 Q. If you can look again at what is</p> <p>14 in front of you as Exhibit A which is the</p> <p>15 complaint, look at paragraph 28, the document</p> <p>16 says you returned from vacation and reported</p> <p>17 to work on October 16th, 2009.</p> <p>18 You returned on October 16th?</p> <p>19 A. That's correct.</p> <p>20 Q. Upon your return, you noticed that</p> <p>21 Mr. Rizzuto's treatment of you had changed.</p> <p>22 Is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. Among other things, it says that</p> <p>25 Mr. Rizzuto avoided interacting with you</p>

15 (Pages 54 to 57)

<p style="text-align: right;">58</p> <p>1 Baffo</p> <p>2 directly and instead only exclusively</p> <p>3 communicated by e-mail.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So the two of you I think you had</p> <p>7 said shared an office.</p> <p>8 Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Did Mr. Rizzuto spend less time in</p> <p>11 the office when you were there?</p> <p>12 A. Yes.</p> <p>13 Q. Can you describe how much less</p> <p>14 time?</p> <p>15 A. Not specifically.</p> <p>16 Q. Prior to October 1st, 2009 how</p> <p>17 often would you interact with Mr. Rizzuto on a</p> <p>18 daily basis?</p> <p>19 A. Several times throughout the day.</p> <p>20 His hours were generally from very</p> <p>21 early in the morning, 5:00 or 6:00 in the</p> <p>22 morning until about 5:00 or so. And he would</p> <p>23 come in and out of the office, make his</p> <p>24 rounds, come back, make his rounds. And there</p> <p>25 was just less of that, he seemed to be doing a</p>	<p style="text-align: right;">60</p> <p>1 Baffo</p> <p>2 A. He was at this point in time the</p> <p>3 Director of Dining Services, he was</p> <p>4 responsible for all the food service on the</p> <p>5 Old Westbury campus and the Manhattan campus</p> <p>6 as well.</p> <p>7 Q. He was responsible not only for</p> <p>8 what was going on at the de Seversky Center</p> <p>9 but all the dining halls throughout the</p> <p>10 campuses?</p> <p>11 A. Yes.</p> <p>12 Q. Wherever there were other food</p> <p>13 services or dining services?</p> <p>14 A. Yes.</p> <p>15 Q. Wherever those buildings would</p> <p>16 have been, I see.</p> <p>17 But there definitely were times</p> <p>18 that both of you were in the office at the</p> <p>19 same time?</p> <p>20 A. Yes.</p> <p>21 Q. You can't really say as of now how</p> <p>22 often that would be on any given day prior to</p> <p>23 October 1st?</p> <p>24 A. I can't, there is no specific</p> <p>25 time, it varied from day-to-day, but he was</p>
<p style="text-align: right;">59</p> <p>1 Baffo</p> <p>2 lot more of his communication from him his PDA</p> <p>3 rather than from his actual desktop.</p> <p>4 Q. I'm going to show my ignorance,</p> <p>5 what is a PDA? It is some kind of --</p> <p>6 A. It's a phone.</p> <p>7 Q. I'm sorry, I really am, what is a</p> <p>8 PDA, I really am totally --</p> <p>9 A. A smart phone.</p> <p>10 Q. -- not totally in the dark.</p> <p>11 When people use these PDA kind of</p> <p>12 things --</p> <p>13 A. It's a smart phone.</p> <p>14 Q. So Mr. Rizzuto his typical hours</p> <p>15 from very early in the morning, 5:00, 6:00</p> <p>16 onwards, and I think you had said for an event</p> <p>17 you would come in at noonish and work at least</p> <p>18 through the entree of the event on those days</p> <p>19 where there were events?</p> <p>20 A. Correct.</p> <p>21 I actually believe I said I would</p> <p>22 be in by noon, sometimes it was 9:00,</p> <p>23 sometimes it was 10:00.</p> <p>24 Q. You said Mr. Rizzuto would make</p> <p>25 his rounds, what does that mean?</p>	<p style="text-align: right;">61</p> <p>1 Baffo</p> <p>2 there, he was in the office, he was not -- he</p> <p>3 usually did a lot of work from his desk.</p> <p>4 Q. At the time that you were also at</p> <p>5 your desk?</p> <p>6 A. Yes.</p> <p>7 Q. I'm just trying to quantify, I</p> <p>8 understand what you're saying that whatever</p> <p>9 the time was that he spent with you prior to</p> <p>10 October 1st diminished after October 1st, I</p> <p>11 think that's what you're saying.</p> <p>12 A. That is correct.</p> <p>13 Q. I'm just trying to quantify</p> <p>14 whether it was he spent an hour in common with</p> <p>15 you before and five minutes after or how much</p> <p>16 did it change or in what manner did it change?</p> <p>17 A. To quantify it, what changed was</p> <p>18 he wasn't in the office, I would say maybe 40,</p> <p>19 50 percent less time, we weren't having</p> <p>20 conversations like we had had. It was</p> <p>21 e-mails, it was a few voicemails, that's not</p> <p>22 to say that we never spoke during that week,</p> <p>23 we did, but it was less, I noticed it, it was</p> <p>24 it was less, he was almost avoiding me.</p> <p>25 Q. Now when you say that week, that's</p>

16 (Pages 58 to 61)

<p style="text-align: right;">62</p> <p>1 Baffo</p> <p>2 the week from October 16th to the 23rd that</p> <p>3 you're referring to?</p> <p>4 A. Correct.</p> <p>5 Q. Because after you told him</p> <p>6 allegedly on the 2nd, you really were only</p> <p>7 there for a number of hours.</p> <p>8 Is that right?</p> <p>9 A. Correct.</p> <p>10 Q. So that when you say that the time</p> <p>11 that he spent with you was less, we are</p> <p>12 talking about from the time you returned from</p> <p>13 October 16th until a week or 10 days later?</p> <p>14 A. Correct.</p> <p>15 Q. All right.</p> <p>16 So one thing that you noticed was</p> <p>17 that whatever the time was that he spent with</p> <p>18 you prior to October 1st diminished?</p> <p>19 A. Yes.</p> <p>20 Q. That's one thing.</p> <p>21 And I think you also said that the</p> <p>22 types of conversations that you did have also</p> <p>23 changed.</p> <p>24 A. Yes.</p> <p>25 Q. I don't want to put words in your</p>	<p style="text-align: right;">64</p> <p>1 Baffo</p> <p>2 changing and sort of the substance or the</p> <p>3 coldness changing, were there any other ways</p> <p>4 in which Mr. Rizzuto acted differently to you</p> <p>5 after October 2nd?</p> <p>6 A. Things like at the end of the day</p> <p>7 when he would leave, he would if I was at my</p> <p>8 desk at that point he would usually get up,</p> <p>9 walk over and shake my hand and say, "Have a</p> <p>10 good night, see you tomorrow," that stopped.</p> <p>11 I had mentioned earlier we would</p> <p>12 go out once or twice a week after work to have</p> <p>13 a couple of drinks or whatever, and there was</p> <p>14 none of that.</p> <p>15 Q. You said you would go out after</p> <p>16 work once or twice a week?</p> <p>17 A. Yes.</p> <p>18 Q. Anything else that you noticed</p> <p>19 about how he acted differently to you?</p> <p>20 A. Not that I recall, no.</p> <p>21 Q. All right.</p> <p>22 You didn't have a conversation</p> <p>23 with him about the way he was acting?</p> <p>24 A. No.</p> <p>25 Q. Just for the record, prior to</p>
<p style="text-align: right;">63</p> <p>1 Baffo</p> <p>2 mouth, that's what I think you said.</p> <p>3 A. I would say that's the gist of</p> <p>4 what I said.</p> <p>5 Q. And the substance of the</p> <p>6 conversation changed?</p> <p>7 A. There was no, he was my friend, I</p> <p>8 had known him for a long time, and that</p> <p>9 friendship it just wasn't there, it was cold</p> <p>10 and it was different, it was different.</p> <p>11 Q. You attribute it being different</p> <p>12 from your having disclosed to him that you</p> <p>13 were HIV positive?</p> <p>14 A. Yes.</p> <p>15 Q. That's just a feeling that you</p> <p>16 had, you never had any conversations with him?</p> <p>17 I should ask you, did you have any conver-</p> <p>18 sations with him about how he was acting</p> <p>19 differently?</p> <p>20 A. No, not on how he was acting</p> <p>21 differently.</p> <p>22 Q. This is your perception of the way</p> <p>23 in which he was acting?</p> <p>24 A. Yes.</p> <p>25 Q. Other than the amount of time</p>	<p style="text-align: right;">65</p> <p>1 Baffo</p> <p>2 October 1st, 2009 is it your contention that</p> <p>3 New York Institute of Technology had</p> <p>4 discriminated against you in any manner?</p> <p>5 A. I'm sorry, can you repeat that.</p> <p>6 Q. Prior to October 1st, 2009, did</p> <p>7 New York Institute of Technology do anything</p> <p>8 with respect to you that you considered to be</p> <p>9 discriminatory?</p> <p>10 A. No.</p> <p>11 Q. So prior to October 1st everything</p> <p>12 was okay?</p> <p>13 A. Yes.</p> <p>14 Q. I'm just asking for the record</p> <p>15 here.</p> <p>16 Other than what you just testified</p> <p>17 to about Mr. Rizzuto's conduct, did New York</p> <p>18 Institute of Technology or anybody working for</p> <p>19 New York Institute of Technology discriminate</p> <p>20 against you prior to October 26th on the date</p> <p>21 of your termination?</p> <p>22 MR. FILOSA: Objection, calls for a</p> <p>23 legal conclusion. Go ahead, you can</p> <p>24 answer.</p> <p>25 A. There was nobody, no person</p>

17 (Pages 62 to 65)

<p style="text-align: right;">70</p> <p>1 Baffo</p> <p>2 MR. SPARBER: I would like to talk</p> <p>3 a little bit about the events of</p> <p>4 October 26th.</p> <p>5 Q. Do you recall reporting to work at</p> <p>6 your usual time? What time did you report to</p> <p>7 work on October 26th if you can recall?</p> <p>8 A. Approximately 9:00.</p> <p>9 Q. As far as you knew it was business</p> <p>10 as usual on the 26th?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 It says in paragraph 30 that</p> <p>14 shortly after you reported to work you were</p> <p>15 called into a meeting with Mr. Rizzuto and Ms.</p> <p>16 Jablonsky.</p> <p>17 Is that right, this is in</p> <p>18 paragraph 30.</p> <p>19 A. That is correct.</p> <p>20 Q. For the record, whose Ms.</p> <p>21 Jablonsky?</p> <p>22 A. She was introduced to me as the</p> <p>23 new director of HR.</p> <p>24 Q. That's the first time you ever met</p> <p>25 her?</p>	<p style="text-align: right;">72</p> <p>1 Baffo</p> <p>2 introduced myself and I welcomed her, and she</p> <p>3 said how beautiful the building was. I said,</p> <p>4 "When we are finished with our meeting I would</p> <p>5 be happy to give you a tour of the place and</p> <p>6 show you how beautiful it actually is."</p> <p>7 Q. Do you recall approximately what</p> <p>8 time this was?</p> <p>9 A. Shortly after 10:00 or --</p> <p>10 Q. Did Mr. Rizzuto do most of the</p> <p>11 talking at this meeting?</p> <p>12 A. He started the conversation, he</p> <p>13 spoke first.</p> <p>14 Q. Do you recall as best you can what</p> <p>15 he said to you?</p> <p>16 A. He said, "Due to economic</p> <p>17 uncertainty and not knowing financially what</p> <p>18 was going to happen in the future, that they</p> <p>19 decided to reorganize the de Seversky Center,</p> <p>20 and as a result the general manager position</p> <p>21 was being eliminated."</p> <p>22 Q. Okay.</p> <p>23 At that point did you say</p> <p>24 anything? I'm just trying to figure out who</p> <p>25 said what, he said this, did Jablonsky then</p>
<p style="text-align: right;">71</p> <p>1 Baffo</p> <p>2 A. Yes.</p> <p>3 Q. Who asked you to go to the</p> <p>4 meeting?</p> <p>5 A. Robert.</p> <p>6 Q. Where were you at the time?</p> <p>7 A. At my desk.</p> <p>8 Q. Do you recall what he said to you</p> <p>9 in sum and substance?</p> <p>10 A. Not specifically, he said, "Can</p> <p>11 you come into the conference room," that was</p> <p>12 it.</p> <p>13 Q. There was a conference room at the</p> <p>14 de Seversky Center?</p> <p>15 A. Yes.</p> <p>16 The conference room that I'm</p> <p>17 referring to is on the second floor, it is</p> <p>18 adjoined to our office, it is where we met</p> <p>19 with clients and whatnot.</p> <p>20 Q. You went to the conference room</p> <p>21 and Ms. Jablonsky was there?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall who spoke next?</p> <p>24 A. She introduced herself as Carol</p> <p>25 Jablonsky, the Director of Human Resources. I</p>	<p style="text-align: right;">73</p> <p>1 Baffo</p> <p>2 say anything?</p> <p>3 A. She at that point jumped in and</p> <p>4 explained the packet that they gave me which</p> <p>5 was a separation agreement. She directed me</p> <p>6 to review it with my lawyer, they spoke to me</p> <p>7 about what the severance package was, and the</p> <p>8 medical benefits and that I would be contacted</p> <p>9 by Maureen Gaughran --</p> <p>10 Q. G-A-U-G-H-R-A-N.</p> <p>11 A. -- regarding Cobra and all of that</p> <p>12 stuff and did I have any questions, and I</p> <p>13 didn't. I think I asked something regarding</p> <p>14 medical benefits but I don't recall exactly</p> <p>15 what. I asked if I could, I knew that they</p> <p>16 would be shutting down my computer, and I</p> <p>17 actually had photos on there that I asked if I</p> <p>18 could copy to my CD.</p> <p>19 Q. You knew that they would be</p> <p>20 shutting down your computer because that is</p> <p>21 their policy with respect to terminations?</p> <p>22 A. Yes.</p> <p>23 Q. You had been involved in other</p> <p>24 terminations from the other side of the coin?</p> <p>25 A. Yes.</p>

19 (Pages 70 to 73)

<p style="text-align: right;">82</p> <p>1 Baffo</p> <p>2 contract.</p> <p>3 Q. So are you aware of any other</p> <p>4 person that had been terminated at New York</p> <p>5 Institute of Technology that did receive a</p> <p>6 separation agreement?</p> <p>7 A. At New York Institute of</p> <p>8 Technology, no.</p> <p>9 Q. Okay.</p> <p>10 So as far as your personal</p> <p>11 knowledge is that you were unaware of any</p> <p>12 other person that had been tendered a</p> <p>13 separation agreement for being let go, for</p> <p>14 being terminated?</p> <p>15 A. Yes, I do not know of anybody else</p> <p>16 at New York Institute of Technology.</p> <p>17 Q. So is it your objection really</p> <p>18 that you were being asked to sign a release in</p> <p>19 exchange for money, is that what your</p> <p>20 objection was, if you can call it an</p> <p>21 objection.</p> <p>22 A. I don't understand that, I'm</p> <p>23 sorry, can you repeat that.</p> <p>24 Q. I'm just trying to sort this out.</p> <p>25 I think that your counsel will</p>	<p style="text-align: right;">84</p> <p>1 Baffo</p> <p>2 I never took it as they felt bad</p> <p>3 or they were trying to do something nice or,</p> <p>4 from the moment that Robert said what he said</p> <p>5 about they were reorganizing based on the</p> <p>6 economic uncertainty, it made absolutely no</p> <p>7 sense to me.</p> <p>8 Q. Did you ever ask him what he meant</p> <p>9 by economic uncertainty?</p> <p>10 A. I didn't ask him what he meant.</p> <p>11 Q. Let me ask you what did you think</p> <p>12 economic uncertainty meant?</p> <p>13 A. He did not, I can't say what he</p> <p>14 was thinking, for me economic uncertainty</p> <p>15 would have been the future economy, but we</p> <p>16 were doing very well, we had bookings, we had</p> <p>17 inquiries coming in, we were up sales from</p> <p>18 previous years, we were up bookings from</p> <p>19 previous years going into 2010.</p> <p>20 Q. I guess I'm asking did you take</p> <p>21 economic uncertainty to mean economic</p> <p>22 uncertainty with respect to the de Seversky</p> <p>23 Center?</p> <p>24 A. Yes.</p> <p>25 Q. Did you take economic uncertainty</p>
<p style="text-align: right;">83</p> <p>1 Baffo</p> <p>2 take the deposition of New York Institute of</p> <p>3 Technology, but I think it is their position</p> <p>4 that they were doing a nice thing in offering</p> <p>5 you the additional monies and the additional</p> <p>6 medical continuation, but you're welcome to</p> <p>7 disagree, you seemingly disagree as to my</p> <p>8 statement.</p> <p>9 MR. FILOSA: Object to your</p> <p>10 statement.</p> <p>11 MR. SPARBER: That's fine.</p> <p>12 A. I disagree.</p> <p>13 I believe that I was let go</p> <p>14 because I was HIV positive and they did not</p> <p>15 want me there as a result of that.</p> <p>16 Q. You never considered the fact that</p> <p>17 because you had disclosed that you were HIV</p> <p>18 positive, they were trying to do a nice thing</p> <p>19 for you?</p> <p>20 A. Well, the fact that I was HIV</p> <p>21 positive, they, I'm sorry, are you asking if</p> <p>22 they felt bad for me?</p> <p>23 Q. No, because I don't think that you</p> <p>24 would know whether they felt bad for you.</p> <p>25 A. I didn't.</p>	<p style="text-align: right;">85</p> <p>1 Baffo</p> <p>2 to be with respect to New York Institute of</p> <p>3 Technology as a whole?</p> <p>4 A. No, not at that time, no.</p> <p>5 Q. Did you take think economic</p> <p>6 uncertainty could have been with respect to</p> <p>7 just the committee as a whole?</p> <p>8 A. That definitely had to do with it,</p> <p>9 sure.</p> <p>10 Q. Now, in the second paragraph on</p> <p>11 page AB 465, you say you were not aware of any</p> <p>12 restructuring, but you were aware that from an</p> <p>13 economic point our revenue and profits were</p> <p>14 substantially higher than both previous years.</p> <p>15 A. I see that.</p> <p>16 Q. What else, it says, in the current</p> <p>17 budget, I'm not sure what that means. In any</p> <p>18 event, let's talk about the years for a</p> <p>19 minute.</p> <p>20 It is a fiscal year for the de</p> <p>21 Seversky Center, correct?</p> <p>22 A. Yes.</p> <p>23 Q. That fiscal year runs from</p> <p>24 September 1st to August 31st of any given</p> <p>25 year?</p>

22 (Pages 82 to 85)

<p style="text-align: right;">110</p> <p>1 Baffo</p> <p>2 identified by Bates numbers AB 032 and AB 033.</p> <p>3 Can you identify this document for</p> <p>4 me, sir?</p> <p>5 A. Yes, this is the PDP for fiscal</p> <p>6 year 2008.</p> <p>7 Q. Similarly, is that your signature</p> <p>8 on the second page under employee signature?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recognize the signature of</p> <p>11 the director as being Mr. Rizzuto's?</p> <p>12 A. Yes.</p> <p>13 Q. And you signed it on or about</p> <p>14 9/24/08?</p> <p>15 A. Yes.</p> <p>16 Q. As with the past ones, did you</p> <p>17 prepare any portion of this report?</p> <p>18 A. This one, no, I didn't.</p> <p>19 Q. So where it says major accomplish-</p> <p>20 ments, that was done by Mr. Rizzuto?</p> <p>21 A. Yes.</p> <p>22 Q. Key goals for the coming year,</p> <p>23 that was also done by Mr. Rizzuto?</p> <p>24 A. Yes.</p> <p>25 Q. The last section filled out,</p>	<p style="text-align: right;">112</p> <p>1 Baffo</p> <p>2 expectations of job descriptions what the</p> <p>3 performance was.</p> <p>4 Q. I'm sorry, are you referring to</p> <p>5 the other positions at de Seversky other than</p> <p>6 general manager?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. And we actually had great</p> <p>10 discussion about what and how those</p> <p>11 expectations needed to reflect in the PDPs</p> <p>12 for all the staff, the general manager</p> <p>13 included. And it was said to me by Robert</p> <p>14 that it is all or nothing, you either meet all</p> <p>15 the expectations or you don't, there was very</p> <p>16 little gray area. And so most of the PDPs for</p> <p>17 that year received either unsatisfactory or</p> <p>18 needs improvement.</p> <p>19 And because I was the general</p> <p>20 manager and responsible for everybody and</p> <p>21 everything, I received unsatisfactory because</p> <p>22 we did not achieve all of the goals. We did</p> <p>23 not achieve all of the expectations across the</p> <p>24 board for myself or for the center as well.</p> <p>25 Q. So just to make sure I understand</p>
<p style="text-align: right;">111</p> <p>1 Baffo</p> <p>2 recommendations for professional development,</p> <p>3 Mr. Rizzuto also filled that out?</p> <p>4 A. Yes.</p> <p>5 Q. I notice that for this particular</p> <p>6 PDP he gave you an unsatisfactory.</p> <p>7 A. Yes.</p> <p>8 Q. Did the time come that you met</p> <p>9 with Mr. Rizzuto to discuss this PDP?</p> <p>10 A. Yes, we did.</p> <p>11 Q. Was that on or about September</p> <p>12 24th, '08?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall any part of the</p> <p>15 discussion that you had with Mr. Rizzuto about</p> <p>16 this exhibit?</p> <p>17 A. Yes.</p> <p>18 Q. Could you describe what you recall</p> <p>19 of being the substance of that conversation?</p> <p>20 A. Yes.</p> <p>21 We had in most of the previous</p> <p>22 year written expectations and standard</p> <p>23 operating procedures for every position in the</p> <p>24 building. And the PDPs were done and</p> <p>25 completed based on that, based on those</p>	<p style="text-align: right;">113</p> <p>1 Baffo</p> <p>2 you, the unsatisfactory rating as described to</p> <p>3 you was really because of the performance of</p> <p>4 the other people at the de Seversky Center</p> <p>5 rather than just strictly saying unsatis-</p> <p>6 factory with respect to your performance as</p> <p>7 general manager?</p> <p>8 MR. FILOSA: Objection, misstates</p> <p>9 his testimony.</p> <p>10 You can answer.</p> <p>11 A. Let me clarify that.</p> <p>12 Q. Go ahead, I don't mean to be</p> <p>13 misleading.</p> <p>14 A. I'm not saying that I received an</p> <p>15 unsatisfactory because of what somebody else</p> <p>16 did.</p> <p>17 Q. Okay.</p> <p>18 A. I received an unsatisfactory</p> <p>19 because as a general manager I didn't make</p> <p>20 sure that everybody did everything that they</p> <p>21 were supposed to do at every moment throughout</p> <p>22 the year. And because how could I get a needs</p> <p>23 improvement or a fully proficient rating if 90</p> <p>24 or so percent of my staff received a needs</p> <p>25 improvement or an unsatisfactory and received</p>

29 (Pages 110 to 113)

<p style="text-align: right;">114</p> <p>1 Baffo</p> <p>2 no increase, no annual increase as a result of</p> <p>3 it, that doesn't make sense, I agree with</p> <p>4 that, which is why this is signed because if</p> <p>5 it is all or nothing, if that's what our</p> <p>6 standard is, if that's what Robert was setting</p> <p>7 up, then you know, my performance was unsatis-</p> <p>8 factory, okay.</p> <p>9 Q. Do you know whether certain of the</p> <p>10 people that you supervised received increases</p> <p>11 in compensation in this year?</p> <p>12 A. Some did.</p> <p>13 I don't recall who, I believe it</p> <p>14 was two or three and it was half a percent,</p> <p>15 three quarters of a percent, maybe one percent</p> <p>16 for each of those individuals.</p> <p>17 Q. How many people in general do you</p> <p>18 supervise?</p> <p>19 MR. FILOSA: Objection, past tense.</p> <p>20 Q. How many people did you supervise</p> <p>21 in this given year?</p> <p>22 A. Including the part-time wait</p> <p>23 staff, approximately 60, 50 to 60.</p> <p>24 Q. All or nothing being that unless</p> <p>25 all 60 of them in essence got increases, that</p>	<p style="text-align: right;">116</p> <p>1 Baffo</p> <p>2 MR. SPARBER: Absolutely.</p> <p>3 Off the record.</p> <p>4 (Whereupon, an off-the-record</p> <p>5 discussion was held.)</p> <p>6 (Time noted: 1:22 p.m.)</p> <p>7 (Time noted: 1:25 p.m.)</p> <p>8 (Whereupon Ms. Beltre reentered the</p> <p>9 room.)</p> <p>10 MR. SPARBER: Let's go back on the</p> <p>11 record.</p> <p>12 Q. Mr. Baffo, last but not least, I</p> <p>13 have shown you a document that's been</p> <p>14 identified by Bates numbers AB 034 through AB</p> <p>15 036.</p> <p>16 I ask you if you can identify this</p> <p>17 document.</p> <p>18 A. It is the PDP for fiscal year</p> <p>19 2009.</p> <p>20 Q. Okay.</p> <p>21 I take it that's your signature on</p> <p>22 the last page?</p> <p>23 A. Yes.</p> <p>24 Q. You dated it on or about September</p> <p>25 19th, '09?</p>
<p style="text-align: right;">115</p> <p>1 Baffo</p> <p>2 would be an unsatisfactory to you?</p> <p>3 A. In essence, yes, not all 60 people</p> <p>4 got a PDP.</p> <p>5 Q. I see.</p> <p>6 A. It was only the full-time</p> <p>7 employees. Well, that's not, it was only the</p> <p>8 waiters did not get PDPs, it was the salaried</p> <p>9 staff, basically some of those people were</p> <p>10 part-time also; that was probably 20 people,</p> <p>11 15 to 20 people.</p> <p>12 Q. Do you recall whether you received</p> <p>13 an increase in compensation?</p> <p>14 A. I did not.</p> <p>15 Q. Do you know whether Mr. Rizzuto</p> <p>16 received an increase in compensation?</p> <p>17 A. I don't know.</p> <p>18 Q. All right.</p> <p>19 MR. SPARBER: Mark this as Exhibit</p> <p>20 Q, for identification.</p> <p>21 (Defendant's Exhibit Q, profes-</p> <p>22 sional development program, marked for</p> <p>23 identification, as of this date.)</p> <p>24 THE WITNESS: I'm sorry, can I just</p> <p>25 take a minute?</p>	<p style="text-align: right;">117</p> <p>1 Baffo</p> <p>2 A. Yes.</p> <p>3 Q. You recognized the supervisor's</p> <p>4 signature as being that of Mr. Rizzuto?</p> <p>5 A. Yes.</p> <p>6 Q. Now, as with the past did you</p> <p>7 prepare any portion of what's been marked as</p> <p>8 Exhibit Q?</p> <p>9 A. Not initially, there are my</p> <p>10 statements on this document, but I did not</p> <p>11 prepare the original document.</p> <p>12 Q. So are you suggesting that there</p> <p>13 was sort of an interim document before this</p> <p>14 one?</p> <p>15 A. Yes.</p> <p>16 Q. I just don't have a copy of it, do</p> <p>17 you?</p> <p>18 A. I do not have a copy of it.</p> <p>19 Q. Okay.</p> <p>20 A. It is actually a carbon copy of</p> <p>21 the, it is not a carbon copy, the key goals</p> <p>22 section is exactly the 2008 PDP.</p> <p>23 Q. Let me just take a look.</p> <p>24 It just seems that in the prior</p> <p>25 year one is considerably shorter, but that</p>

30 (Pages 114 to 117)